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OFFICE OF PETITIONS

In re Application of
Rowley et al.
Application No. 10/636,109
Filed: August 7, 2003
Attorney Docket
No. 700798.90116

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:DECISION DISMISSING PTA
:RECONSIDERATION
:
:

This decision is in response to patentees' APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b) filed on April 17, 2006 requesting that the Office adjust the PTA at the time of the mailing of the notice of allowance from a determination of 268 days to a determination of 345 days.

Applicants' request regarding PTA is **DISMISSED**. Applicants are given thirty days to respond to this PTA decision. No extensions of time will be granted under 37 CFR 1.136. The correct amount of PTA at the time of the mailing of the notice of allowance is 283 days.

Applicants' assert that the Office erred in assessing an eighty-two (82) day reduction for the submission of IDS on February 27, 2006. Applicants assert that the reduction should not have been considered a failure to engage in reasonable efforts to conclude prosecution of the application because applicants meet the safe harbor provisions of 37 CFR 1.704(d). Applicants assert that the IDS was in response to a supplemental European Search Report issued on January 23, 2006 and was filed within 30 days of receipt of the supplemental search report. Applicants also assert that their response was submitted on December 27, 2005 rather than the PALM entry date of December 07, 2005. Accordingly, applicants assert that their response was 5 days over the 3-month reply requirement of 37 CFR 1.704(b)

Patentees' assertion is only persuasive to the extent herein indicated. As for the 5-day applicant delay, the Office is in agreement PALM inaccurately entered the date of December 07, 2005 rather than the correct date of December 27, 2005. Since the USPTO mailed the Office action on September 22, 2005, applicants response was five days beyond the three-month reply period. Accordingly, the Office will assess 5-days of additional applicant delay. As for the 82-day reduction, the Office notes that the reply was not mailed until December 27, 2005 and accordingly the IDS submission on February 27, 2005 amounted to 62-days of applicant delay. Applicants asserts that the delay under 37 CFR 1.704(c)(8) should be excused because applicants met

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the requirements of 37 CFR 1.704(d).

Applicants needs to make a certification statement under 37 CFR 1.704(d). The statement should assert the following:

A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

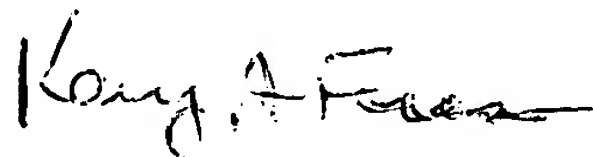
Applicants statement should mirror the language enumerated *supra*.

Applicants have cited that the IDS was in response to two different search reports (Supplemental search report mailed on 1/18/2006) and a supplemental European Search report issued on January 23, 2006. If applicants did receive two search report, then none of the references cited on February 27, 2004 could be from the 1/18/2006 search report because such reference would not meet the requirement that the item contained in the IDS was **FIRST** cited with 30 days of filing. Assuming *arguendo* that the references were either not cited in the 1/18/2006 report or such report did not exist, then the Office notes that the submission of the IDS on 2/27/2006 is still not within 30 days of the 1/23/2006 report. Accordingly, the Office cannot ascertain how applicants can make such 30-day statement.

Accordingly, the Office notes that the correct amount of PTA is 283 days at the time of the mailing of the notice of allowance. $350 - (5 + 62) = 283$.

The Office has assessed the \$200.00 fee. No additional fees are required in deciding this request for reconsideration.

Any questions concerning this decision should be directed to Kery A. Fries, Senior Legal Advisor, at 571-272-7757.



Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

cc: adjusted PAIR calculation

Day : Wednesday

PALM INTRANET

Date: 9/6/2006

Time: 14:19:53

PTA Calculations for Application: 10/636109

Application Filing Date:	08/07/2003	PTO Delay (PTO):	350
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	82
Post-Issue Petitions:	0	Total PTA (days):	283
PTO Delay Adjustment:	15		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
47	09/06/2006	ADJUSTMENT OF PTA CALCULATION BY PTO	15		
37	03/30/2006	MAIL NOTICE OF ALLOWANCE			
36	03/28/2006	ISSUE REVISION COMPLETED			
35	03/28/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
34	03/28/2006	CASE DOCKETED TO EXAMINER IN GAU			
33	03/28/2006	NOTICE OF ALLOWABILITY			
32	02/27/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
31	12/28/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
30	03/19/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
29	02/27/2006	REFERENCE CAPTURE ON IDS			
28	02/27/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		82	26
27	01/30/2006	DATE FORWARDED TO EXAMINER			
26	12/07/2005	RESPONSE AFTER NON-FINAL ACTION			
25	12/28/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
24	09/22/2005	MAIL NON-FINAL REJECTION	350		-1
23	09/20/2005	NON-FINAL REJECTION			
22	04/06/2005	MISCELLANEOUS INCOMING LETTER			
21	04/05/2005	CASE DOCKETED TO EXAMINER IN GAU			
20	10/25/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
19	03/19/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

18	10/25/2004	CASE DOCKETED TO EXAMINER IN GAU			
16	01/21/2004	APPLICATION RETURN FROM OIPE			
15	01/21/2004	APPLICATION RETURN TO OIPE			
14	01/21/2004	APPLICATION IS NOW COMPLETE			
13	01/20/2004	APPLICATION RETURN FROM OIPE			
12	01/20/2004	APPLICATION IS NOW COMPLETE			
11	12/08/2003	ADDITIONAL APPLICATION FILING FEES			
10	12/08/2003	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
9	11/03/2003	NOTICE MAILED--APPLICATION INCOMPLETE-- FILING DATE ASSIGNED			
8	11/03/2003	PRE-EXAM OFFICE ACTION WITHDRAWN			
7	11/01/2003	APPLICATION RETURN TO OIPE			
6	11/01/2003	APPLICATION DISPATCHED FROM OIPE			
5	11/03/2003	APPLICATION IS NOW COMPLETE			
4	10/25/2003	CASE CLASSIFIED BY L&R			
3	10/25/2003	CLEARED BY OIPE CSR			
2	09/05/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	08/07/2003	INITIAL EXAM TEAM NN			

Search Another: Application#

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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Back to [PALM](#) | [ASSIGNMENT](#) | [OASIS](#) | [Home page](#)